

**AGREEMENT BETWEEN THE COUNTY OF SANTA CLARA AND THE CITY
OF SAN JOSE RELATED TO THE APPLICATION OF SLURRY SEAL ON
SPECIFIED ROADS IN UNINCORPORATED POCKETS IN CONJUNCTION
WITH ANNEXATION BY CITY**

THIS AGREEMENT is made effective this _____ day of _____, 2012 by and between the County of Santa Clara, a political subdivision of the State of California, hereinafter referenced to as "COUNTY" and the City of San Jose, a municipal corporation of the State of California, hereinafter referred to as "CITY".

RECITALS

WHEREAS, CITY has pursued annexation of unincorporated pockets as required by the settlement agreement related to the North First Street litigation between the CITY and COUNTY; and

WHEREAS, COUNTY is not required to improve roads in unincorporated pockets prior to annexation by CITY; and

WHEREAS, COUNTY, at its own expense, voluntarily implemented various road maintenance treatments, including chip seal and overlay, on specified roads within the five (5) unincorporated pockets shown on Exhibit A attached hereto and incorporated herein by reference; and

WHEREAS, specified roads within the five (5) unincorporated pockets annexed by the CITY have been designated for improvements involving a slurry seal treatment or some other rehabilitation as shown in Exhibit B attached hereto and incorporated herein by reference (hereinafter "PROJECT"); and

WHEREAS, COUNTY is willing to voluntarily pay CITY a fixed lump sum to implement the PROJECT and CITY desires to accept payment from COUNTY and assume full responsibility for performing the PROJECT using the COUNTY funding; and

WHEREAS, COUNTY requires a written agreement with CITY to effectuate payment;

NOW, THEREFORE, in consideration of their mutual promises and agreements, and subject to the terms, conditions, and provisions hereinafter set forth, the parties hereto agree as follows:

AGREEMENT

1. COMPENSATION

COUNTY shall pay CITY and CITY shall accept from COUNTY a not to exceed payment of a lump sum of One Hundred Forty Two Thousand Four Hundred and Fifty Three Dollars and Zero Cents (\$142,453.00) for the estimated costs related to the PROJECT. The not to exceed lump sum amount of One Hundred Forty Two Thousand Four Hundred and Fifty Three

Dollars and Zero Cents (\$142,453.00) shall cover all necessary materials and labor needed to complete the PROJECT.

2. COMPLETION OF PROJECT

CITY shall have full responsibility for completion of the PROJECT at CITY discretion. COUNTY will have no responsibility to perform the work. COUNTY shall incur no liability for the implementation or the nonimplementation of the PROJECT by CITY.

3. INVOICE AND PAYMENT

Within thirty (30) calendar days of the effective date of this AGREEMENT, CITY shall forward to COUNTY a written invoice for the not to exceed lump sum amount specified by COUNTY. The invoice shall be delivered to the individual designated to receive notice on behalf of COUNTY as set forth in Section 5 below. The COUNTY shall pay the invoice within 30 days.

4. HOLD HARMLESS/INDEMNIFICATION

Neither of the respective Parties, their respective governing body, employees, officers, agents and assigns shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by the other party in connection with the PROJECT.

It is understood and agreed that pursuant to California Government Code Section 895.4, the respective Parties shall fully indemnify and hold the other harmless from any liability imposed for injury (as defined in Government Code Section 810.8) by reason of anything done or omitted to be done by COUNTY or SAN JOSE in connection with any work, authority or jurisdiction delegated to the respective Party under this Agreement. This hold harmless and indemnification provision shall apply to any activities, error or omission of the respective Party and/or the Party's officers, employees, agents, consultants or contractor or any person or entity acting or omitting to act for or on behalf of said City or such person or entities as are specifically authorized and empowered by the respective Party to act for the Party.

//

//

//

5. NOTICES

All correspondence relating to the AGREEMENT, including all notices required shall be delivered by first class mail addressed to the appropriate party at the following addresses:

COUNTY: Michael Murdter, Director
Roads and Airports Department
101 Skyport Drive
San Jose, CA 95110-1302

CITY: Hans Larsen, Director
Department of Transportation
City of San Jose
200 East Santa Clara Street
San Jose, CA 95113

6. ADDITIONAL PROVISIONS

(a) If any term, condition or covenant of this AGREEMENT is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this AGREEMENT shall be valid and binding on COUNTY and CITY.

(b) This AGREEMENT shall be governed and construed in accordance with the laws of the State of California.

(c) Any change to this AGREEMENT must be in writing in the form of an amendment and approved by both parties.

(d) The captions of the various sections, paragraphs and subparagraphs of this Agreement are for convenience only and shall not be considered nor referred to for resolving questions of interpretation of this Agreement.

(e) This Agreement shall not be construed or deemed an agreement for the benefit of any third party or parties and no third party or parties shall have any claim or right of action hereunder for any cause whatsoever.

(f) The parties' waiver of any term, condition or covenant, or breach of any term, condition or covenant shall not be construed as a waiver of any other term, condition or covenant or breach of any other term, condition or covenant.

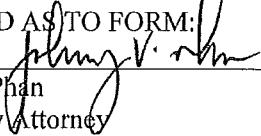
(g) This Agreement contains the entire agreement between CITY and COUNTY related to the Project. Any prior agreements, promises, negotiations, or representations not expressly set forth in this agreement are of no force or effect.

IN WITNESS WHEREOF, the parties have executed the AGREEMENT the day and year set forth above.

CITY:

CITY OF SAN JOSE, a municipal corporation

By: _____ Date: _____
Norberto Duenas,
Deputy City Manager

APPROVED AS TO FORM: _____
By:  _____ Date: 9/5/12
Johnny V. Phan
Deputy City Attorney

COUNTY:

COUNTY OF SANTA CLARA

By: _____ Date: _____
Michael Murdter, Director
Roads and Airports Department

By: _____ Date: _____
Sylvia Gallegos
Office of the County Executive

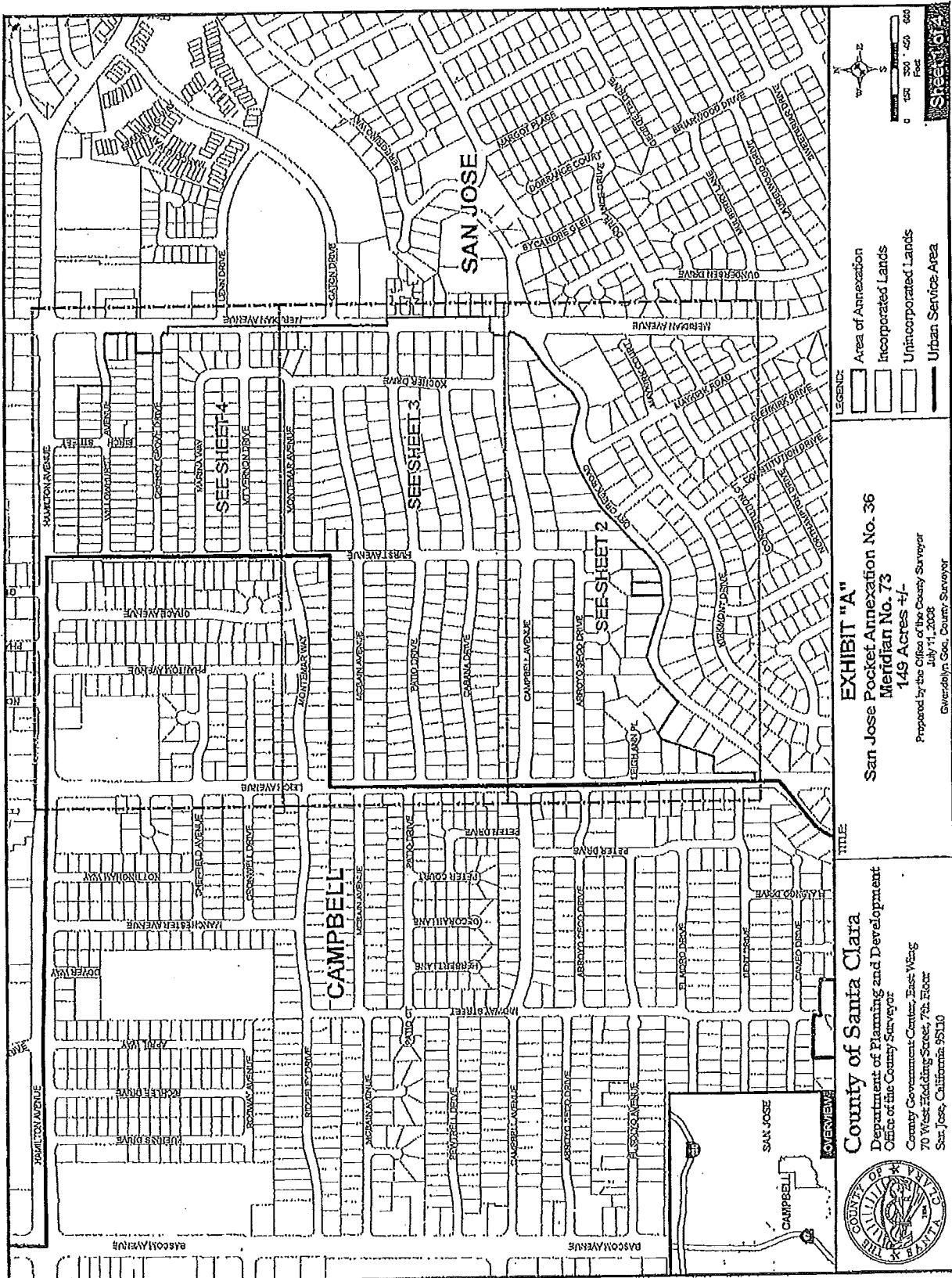
APPROVED AS TO FORM AND LEGALITY:

By: _____ Date: _____
Elizabeth G. Pianca
Deputy County Counsel

Attachments to Agreement—

Exhibit A—Map of Roads

Exhibit B—Slurry Seal Treatment

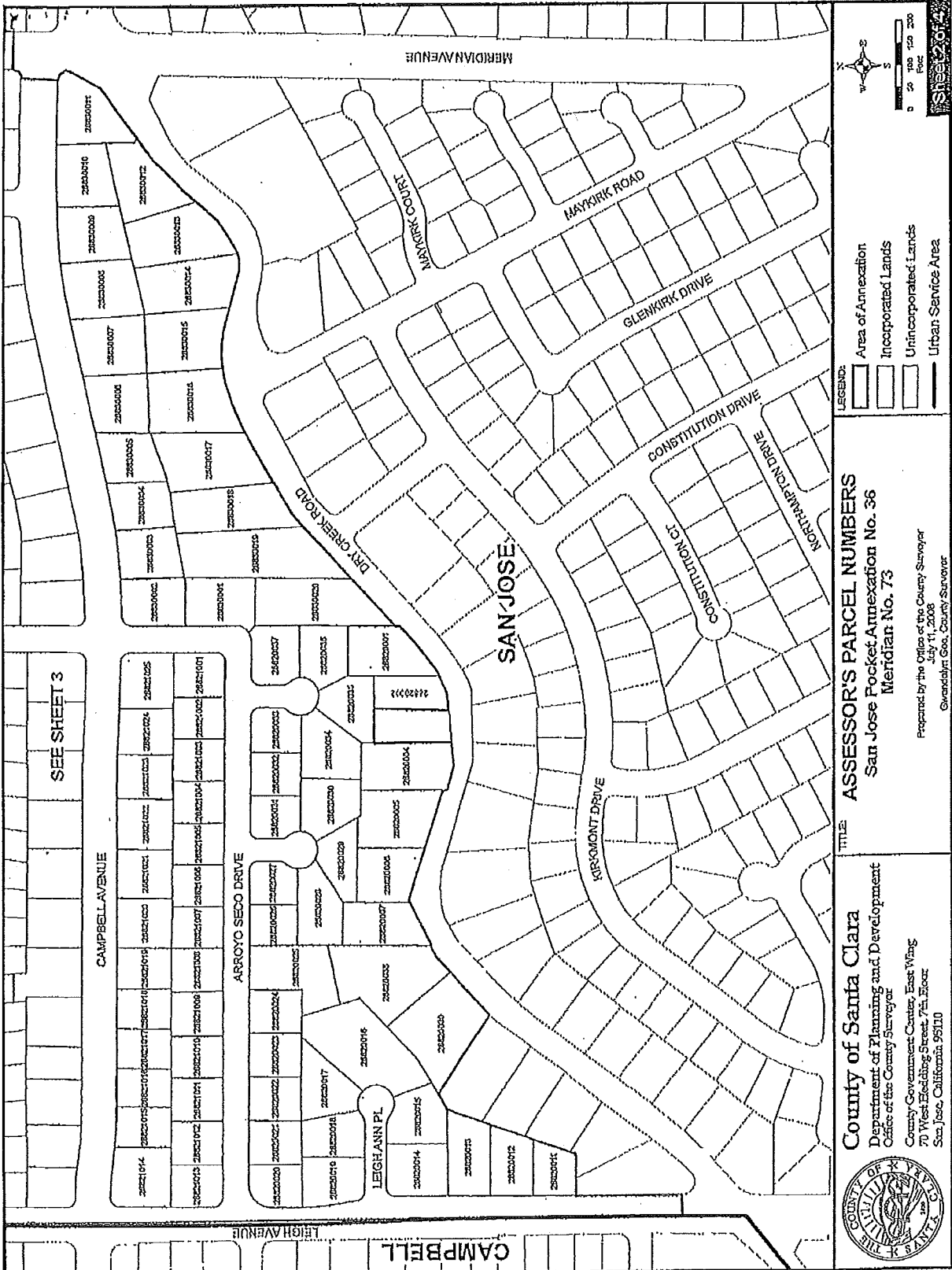


T-159067 896509

Council Agenda: 9/18/12

Item No.: 2.9b

DRAFT-- Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.



T-15906 / 896509

Council Agenda: 9/18/12

Item No.: 2.9b

DRAFT-- Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.



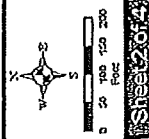
County of Santa Clara
Department of Planning and Development
Office of the County Surveyor
County Government Center, East Wing
70 West Elgin Street, 7th Floor
San Jose, California 95110

TITLE

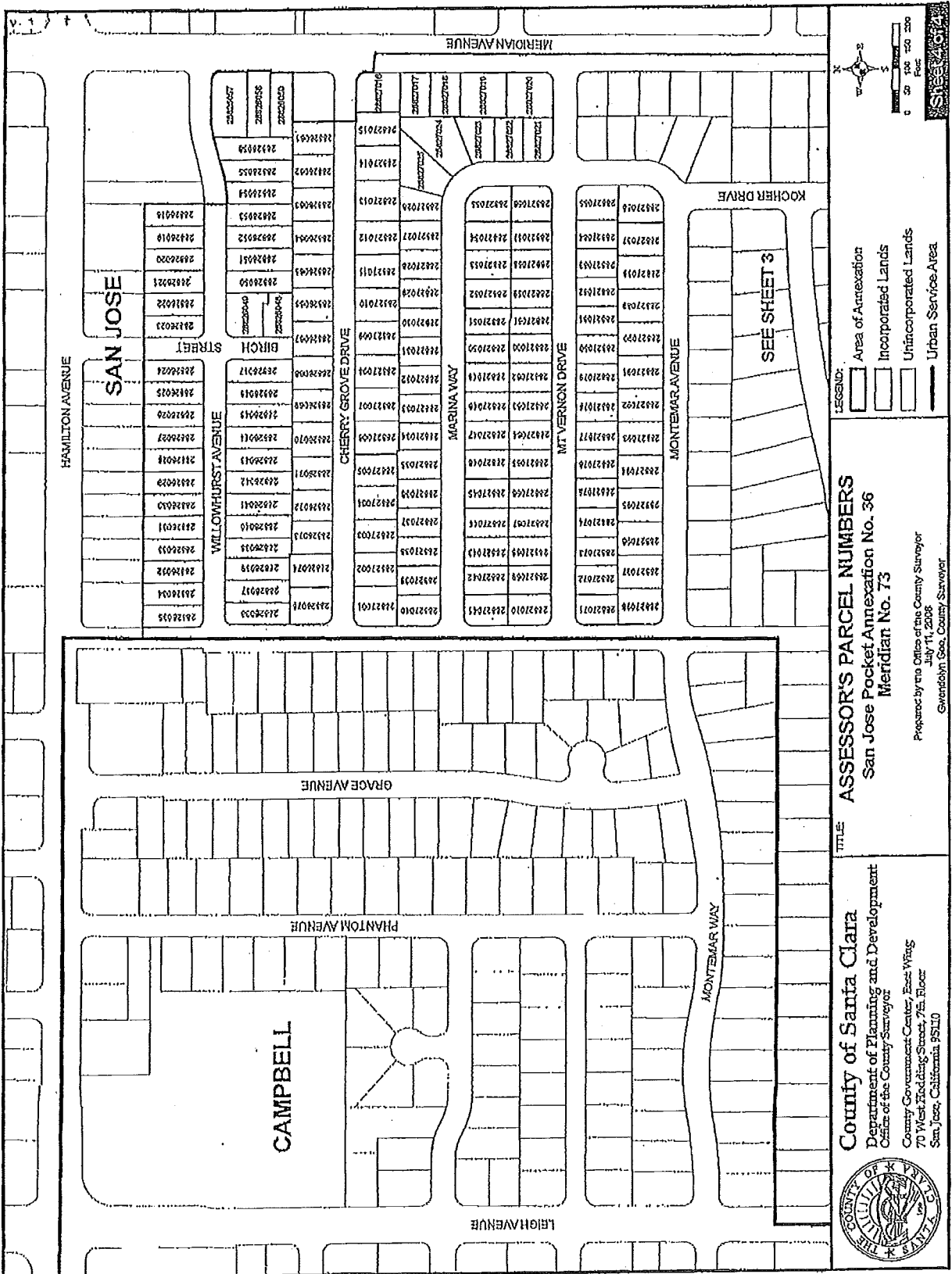
ASSESSOR'S PARCEL NUMBERS
San Jose Pocket Annexation No. 36
Meridian No. 73

Prepared by the Office of the County Surveyor
July 11, 2008
Gwendolyn Goo, County Surveyor

LEGEND:
Area of Annexation
Incorporated Lands
Unincorporated Lands
Urban Service Area



Sheet 2 of 2

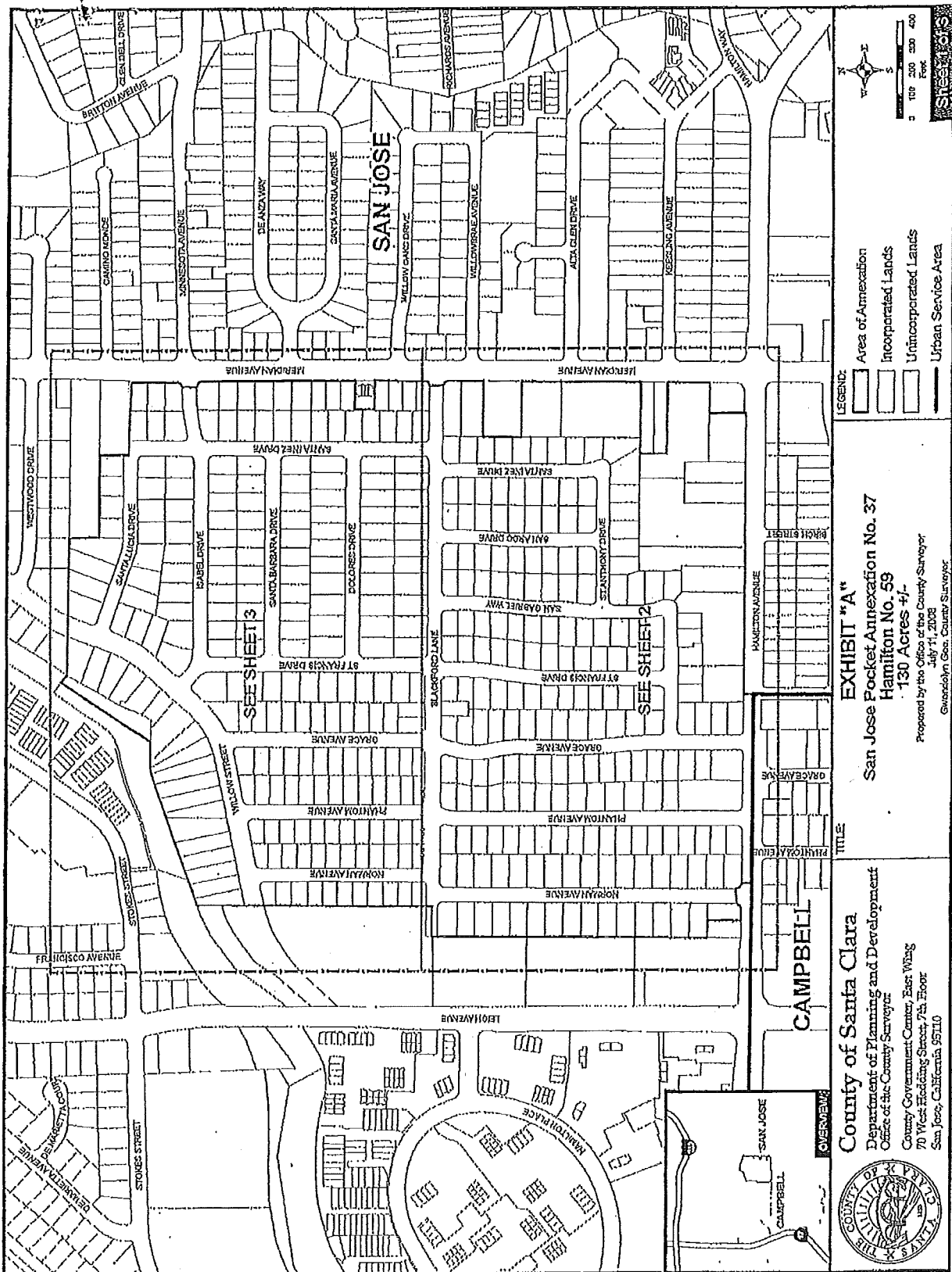


T-15906 / 896509

Council Agenda: 9/18/12

Item No.: 2.9b

DRAFT-- Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.

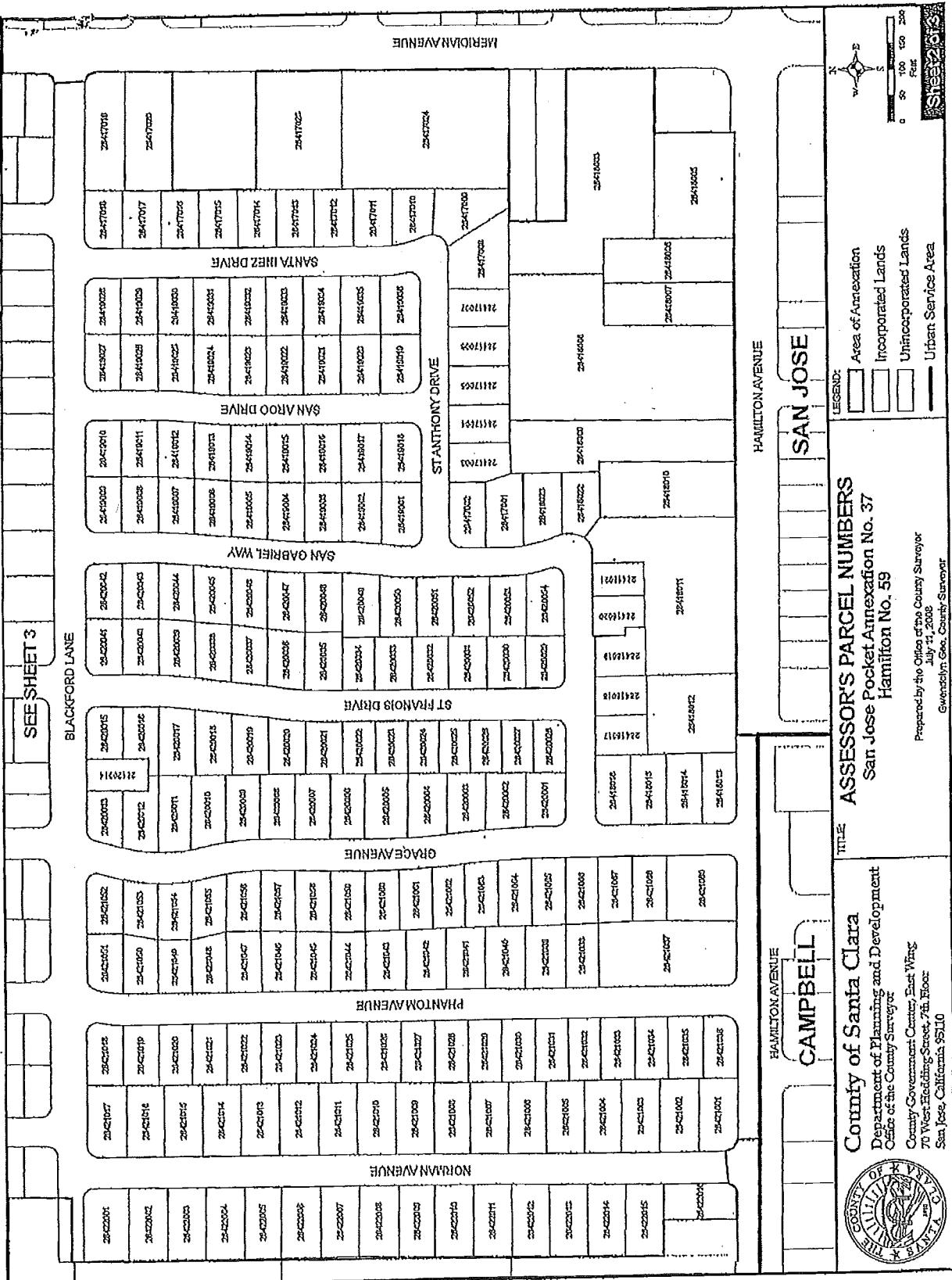


T-15906 / 896509

Council Agenda: 9/18/12

Item No.: 2.9b

DRAFT-- Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.



T-159067 896509

Council Agenda: 9/18/12

Item No.: 2.9b

DRAFT-- Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.

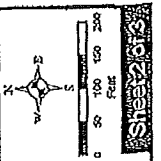


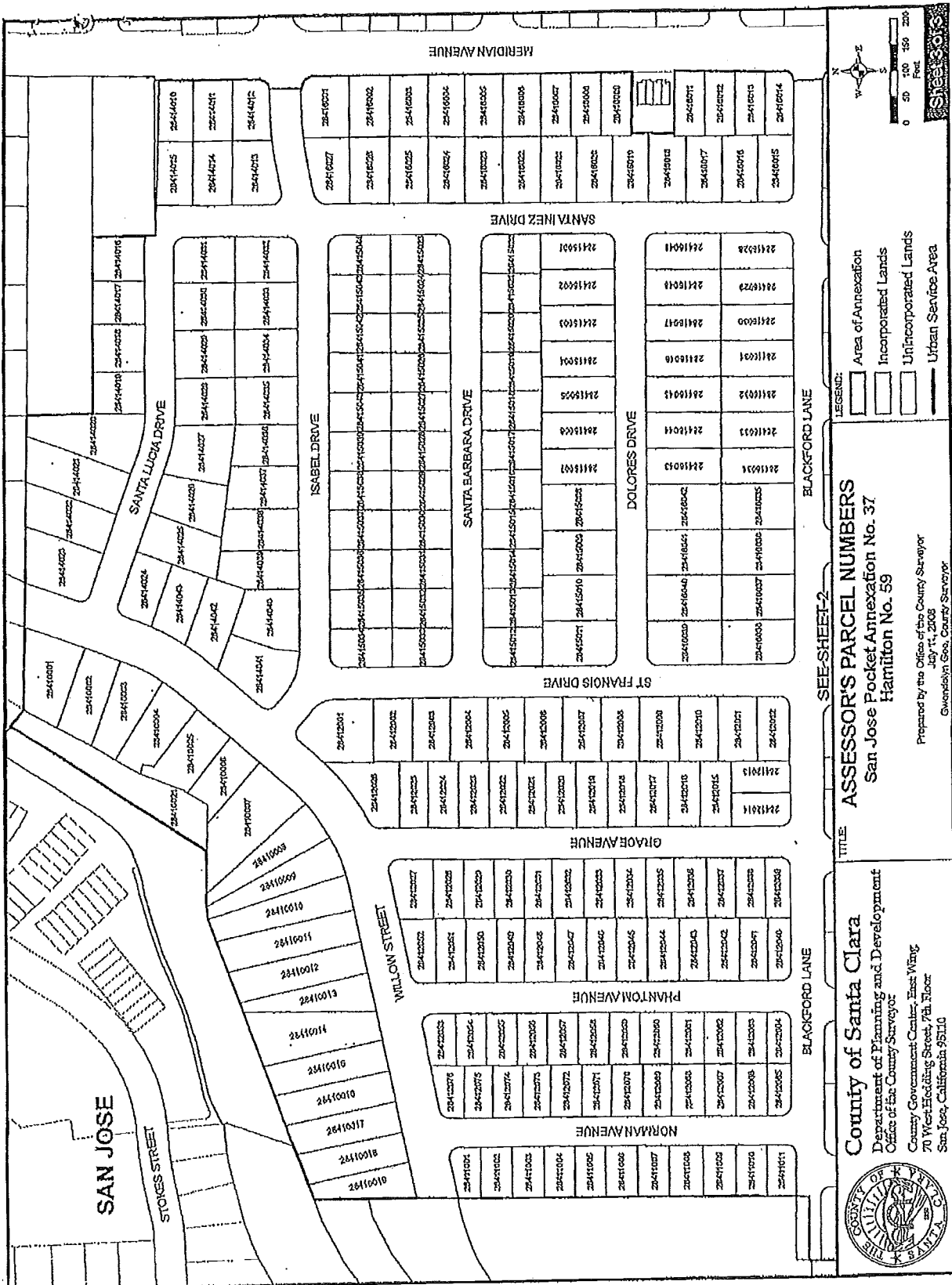
County of Santa Clara
 Department of Planning and Development
 Office of the County Surveyor
 County Government Center, East Wing
 70 West Hedding Street, 7th Floor
 San Jose, California 95110

TITLE ASSESSOR'S PARCEL NUMBERS
 San Jose Pocket Annexation No. 37
 Hamilton No. 59

Prepared by the Office of the County Surveyor
 July 11, 2008
 Gwendolyn Geo. County Surveyor

LEGEND:
 [Symbol] Area of Annexation
 [Symbol] Incorporated Lands
 [Symbol] Unincorporated Lands
 [Symbol] Urban Service Area



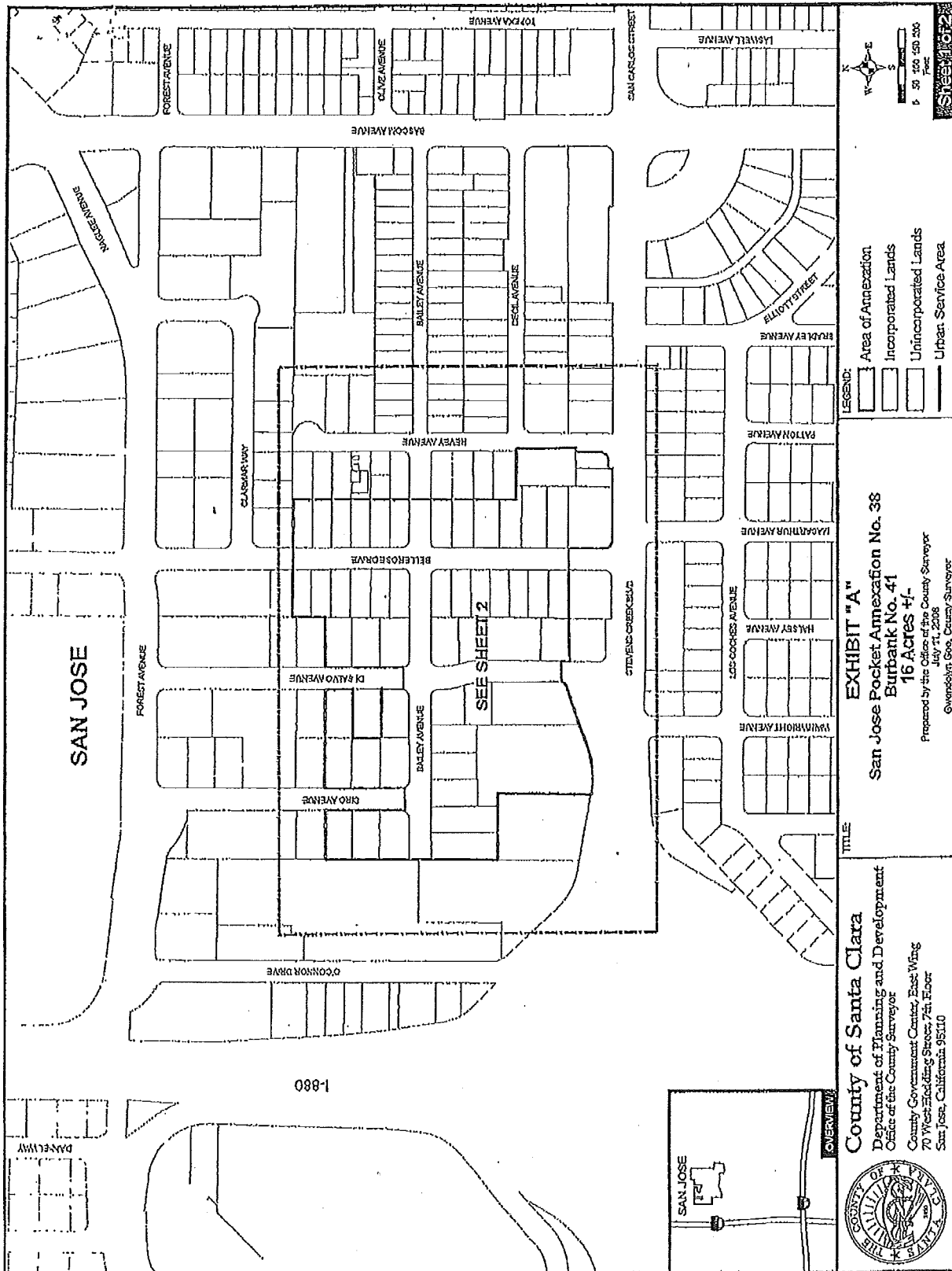


T-15906 / 896509

Council Agenda: 9/18/12

Item No.: 2.9b

DRAFT-- Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.

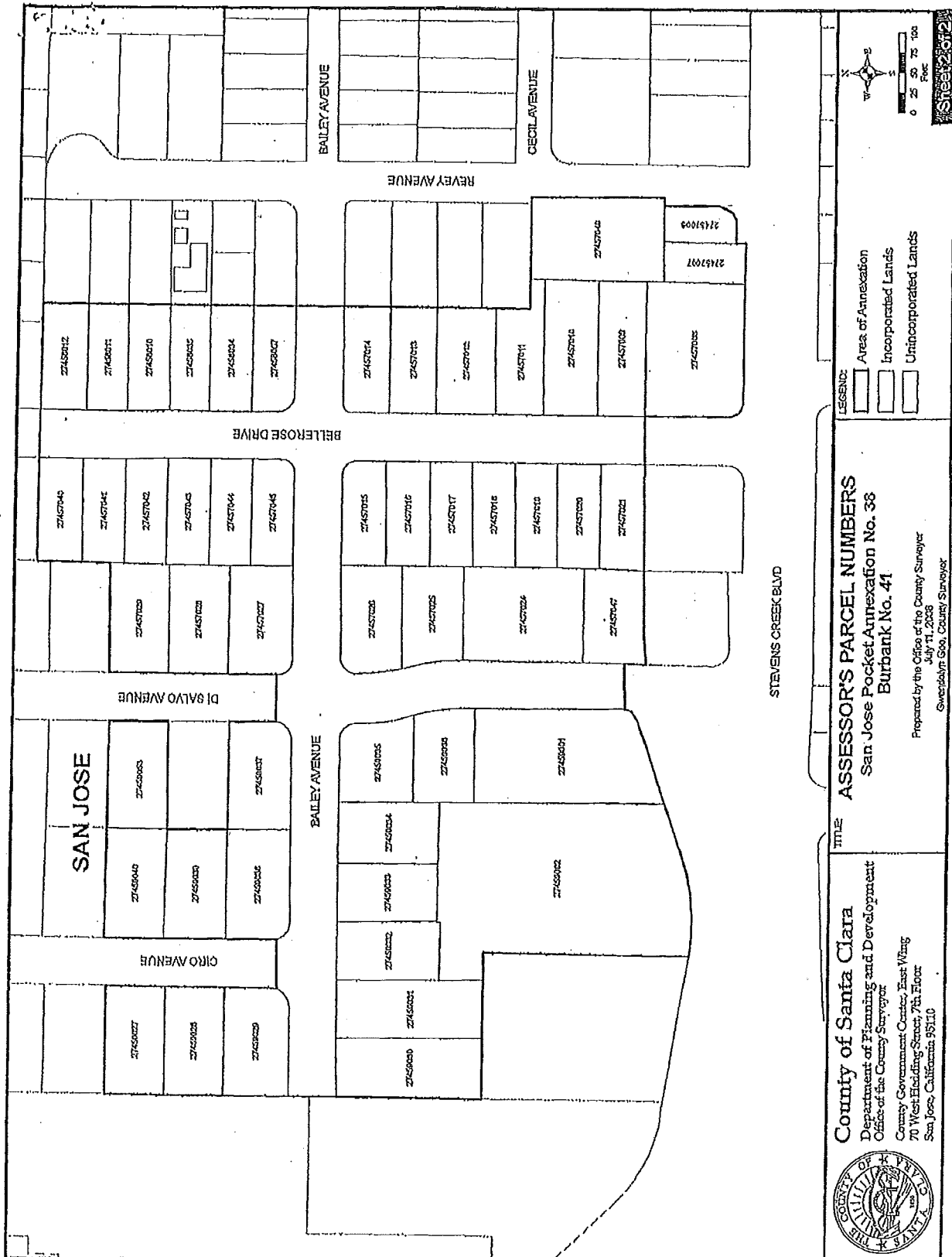


T-15900 / 896509

Council Agenda: 9/18/12

Item No.: 2.9b

DRAFT-- Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.

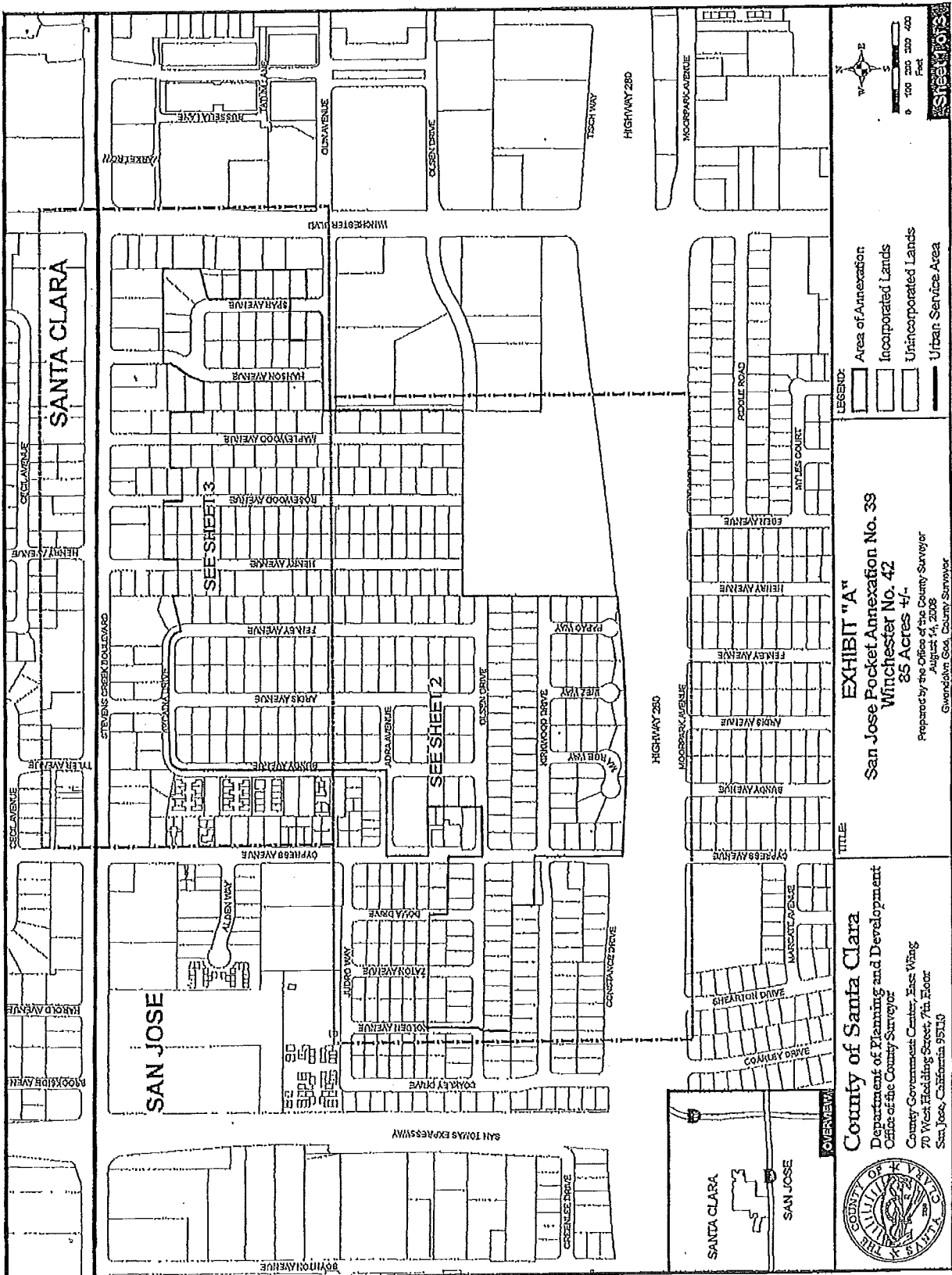


T-15906 / 896509

Council Agenda: 9/18/12

Item No.: 2.9b

DRAFT-- Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.

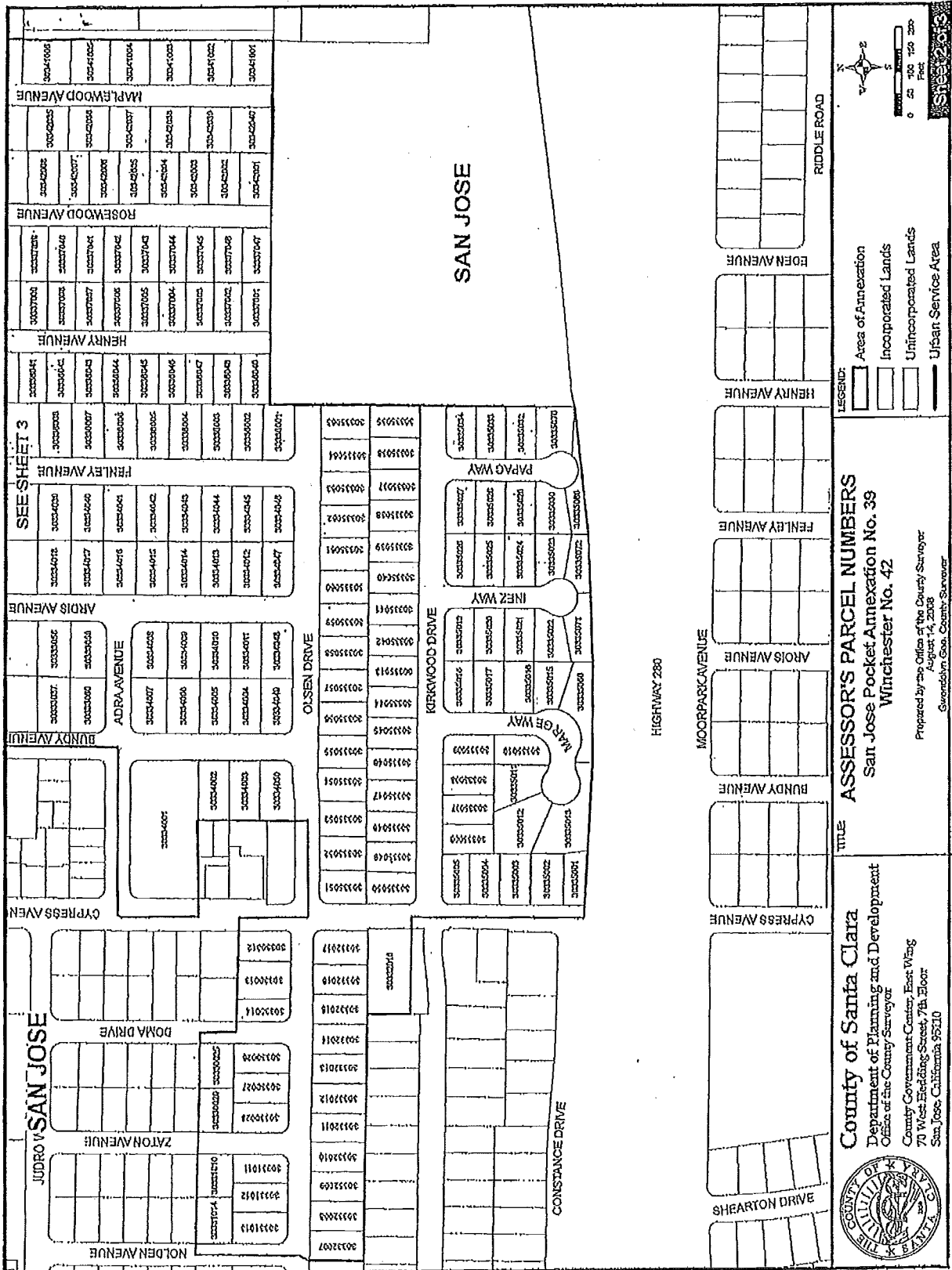


T-15906 / 896509

Council Agenda: 9/18/12

Item No.: 2.9b

DRAFT-- Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.

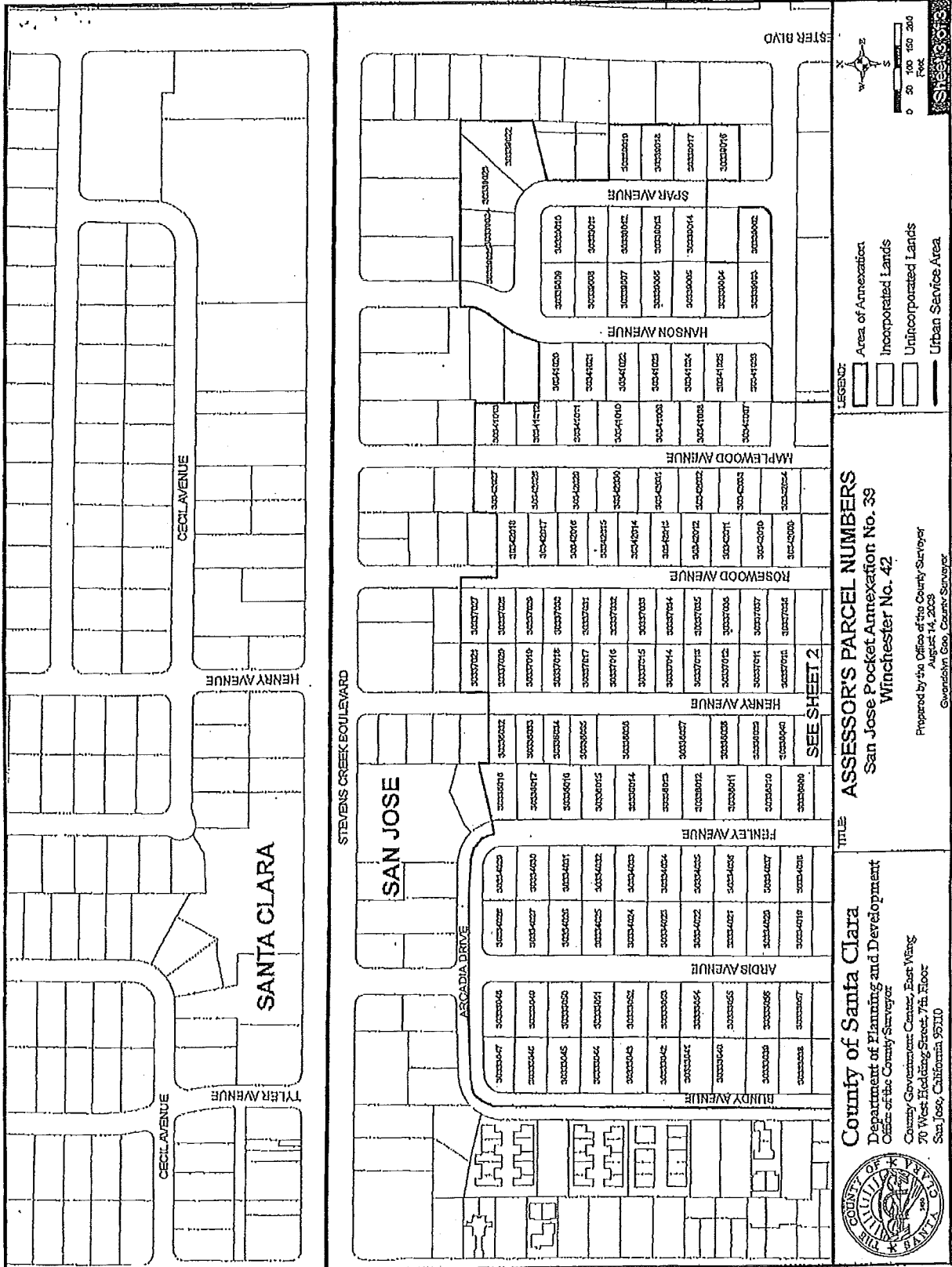


T-15906 / 896509

Council Agenda: 9/18/12

Item No.: 2.9b

DRAFT-- Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.

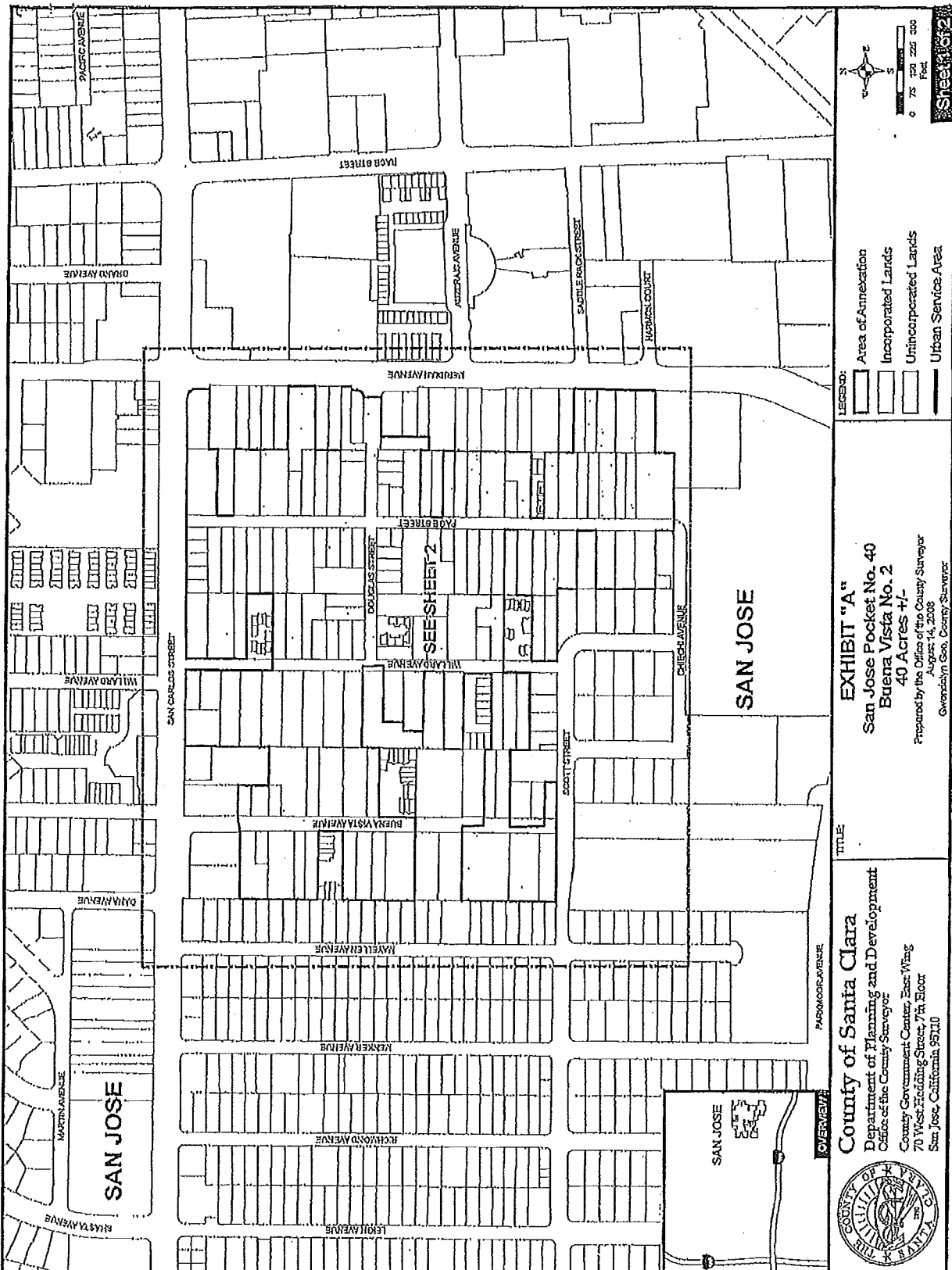


T-15906 / 896509

Council Agenda: 9/18/12

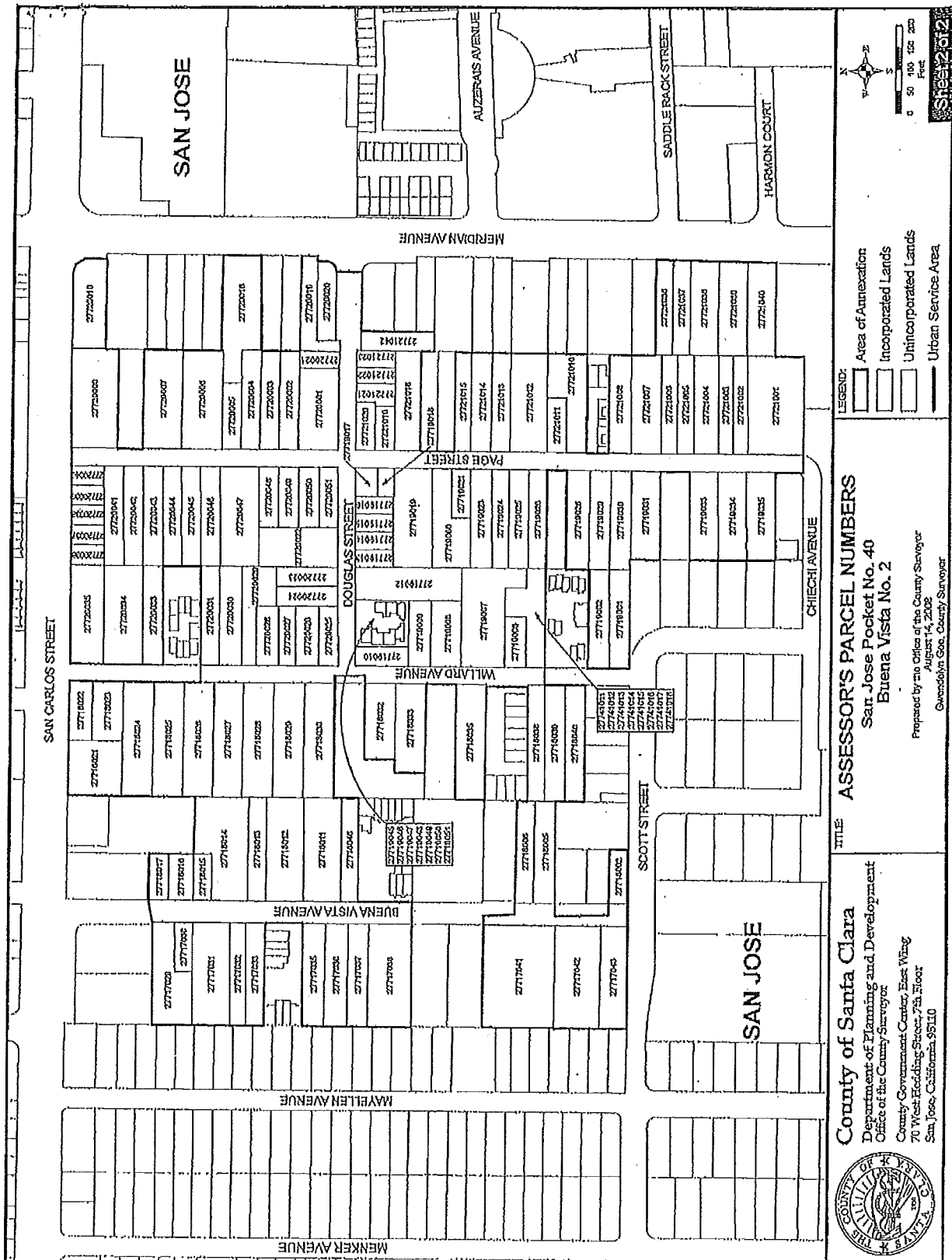
Item No.: 2.9b

DRAFT-- Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.



T-15906 / 896509
 Council Agenda: 9/18/12
 Item No.: 2.9b

DRAFT-- Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.



T-15906 / 896509

Council Agenda: 9/18/12

Item No.: 2.9b

DRAFT-- Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.

Exhibit B Slurry Seal

Slurry Seal Totals for 2010 City of San Jose Annexations

Road Names	Street ID	Begin Location	End Location	PCI	Length	Road Width	Area of Section	Pocket Name
BELLEROSE DR	73029B	0004N. STV CRK BLV.	0013 N.	57	686	40	27440	Burbank 41
CABANA DR	73084B	HURST	KOCHER	60	1056	38	40128	Meridian 73
CABANA DR	73084A	LEIGH	HURST	65	1267	38	48146	Meridian 73
CIRO AVE	73160C	.01 N BAILEY	BAILEY	58	52	38	1976	Burbank 41
CYPRESS AVE	73015C	0005 S ADRA	0004 S	65	211	37	7807	Winchester 42
CYPRESS AVE C1	730151	OLSON DRIVE	0004 S	69	211	37	7807	Winchester 42
DOLORES DR	73088A	SANTA INEZ	ST. FRANCIS	62	845	38	32110	Hamilton 59
ISABEL DR	73077A	WILLOW	MERIDIAN	69	1267	38	48146	Hamilton 59
MARINA WY	73377A	MT VERNON	HURST	67	1267	33	41811	Meridian 73
MCBAIN AVE	73087A	KOCHER DR	LEIGH	53	2323	38	88274	Meridian 73
NORMAN AVE	73093A	HAMILTON	BLACKFORD	81	1320	38	50160	Hamilton 59
NORMAN AVE	73093B	BLACKFORD	WILLOW	55	686	34	23324	Hamilton 59
OLIN AVE	73313A	MAPLEWOOD	0002 E	61	106	37	3922	Winchester 42
PHANTOM AVE	73345A	WILLOW	BLACKFORD	54	739	38	28082	Hamilton 59
PHANTOM AVE	73345B	BLACKFORD	HAMILTON	54	1267	38	48146	Hamilton 59
SAN GABRIEL WAY	73348A	KEESLING	BLACKFORD	63	950	32	30400	Hamilton 59
SANTA INEZ DR	73100A	ST ANTHONY	BLACKFORD	59	686	38	26068	Hamilton 59
SANTA INEZ DR	73100B	BLACKFORD	ST LUCIA	54	1320	38	50160	Hamilton 59
SANTA LUCIA DR	73101A	SANTA INEZ	WILLOW	68	739	37	27343	Hamilton 59
ST ANTHONY DR	73328A	SAN GABRIEL	SANTA INEZ	66	581	33	19173	Hamilton 59
ST. FRANCIS DR	73092B	BLACKFORD	KEESLING	68	950	38	36100	Hamilton 59
WILLOWHURST AVE	73082B	0007 W MERIDIAN	HURST	55	950	30	28500	Meridian 73

Total Area = 715,023